

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

Gilhealy  
31676

**FILE:** B-218601

**DATE:** July 12, 1985

**MATTER OF:** TAB, Inc.

**DIGEST:**

1. Protest based on alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date.
2. Protest that RFP was vague about how information would be provided to contractor is untimely because it was not filed within 10 days of protester's knowledge that agency would adhere to different interpretation than protester's.
3. Protest that award should not have been made on the basis of initial proposals is untimely because it was not filed within 10 days of protester learning of agency's intention to award on basis of initial proposals.
4. Protest allegation that is not supported by evidence in the written record is regarded as speculative and will not be considered.

TAB, Inc., protests the award by the State Department, Office of Foreign Missions (OFM), of contract No. 8710-575265 to System Development Corporation (SDC) for a vehicle insurance tracking system. TAB contends that OFM did not have the authority to conduct this procurement under the Foreign Missions Act, 22 U.S.C. 4308(d) (1982); that the RFP gave no indication of the relative importance of the evaluation criteria; that two of the three evaluation factors were meaningless; that the RFP was vague; that the awardee received information not in the RFP, and that award should not have been made on the basis of initial proposals.

We dismiss the protest.

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We consider untimely TAB's protest that the procurement was not authorized by statute, that the RFP did not indicate the relative importance of the evaluation criteria, and that two of the three evaluation factors in the RFP were meaningless. These protest issues were evident from the solicitation, but were not protested until after the initial closing date for receipt of proposals. Our Bid Protest Regulations require that protests based upon alleged improprieties apparent in a solicitation must be filed prior to the closing date for receipt of proposals. 4 C.F.R. 21.2(a)(1) (1985); Lockheed California Company, B-218143, June 12, 1985, 85-1 C.P.D. ¶ \_\_\_\_.

Both OFM and SDC argue that TAB's protest that the RFP was vague should be dismissed as untimely. They contend the protest involves an alleged defect in the RFP and should have been filed prior to the closing date for receipt of proposals.

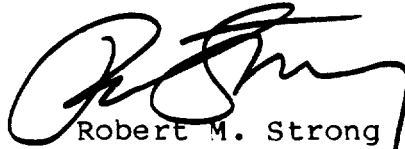
We find TAB's protest on this issue untimely, but on a different basis. TAB assumed that the RFP statement that OFM would "provide any available insurance information" meant that OFM would provide the information in magnetic tape form or hard copy printouts, since OFM was providing other information in magnetic tape form. TAB did not consider that OFM wanted its contractor to maintain a mail drop box to accept correspondence from insurance companies and a clerical staff to open and process the mail. TAB only became aware that insurance information was to be transmitted in this manner, when it met with OFM officials on April 9, after the closing date, to clarify its proposal. Since TAB was unaware prior to the closing date that its interpretation of the solicitation language was not the only one possible, it cannot be held to have been aware of an ambiguity for purposes of protesting before the closing date. Tenavision, Inc., B-216274, Apr. 15, 1985, 85-1 C.P.D. ¶ 427. Nonetheless, once TAB became aware, on April 9, that OFM was going to adhere to a different interpretation of the solicitation provision, it should have filed a protest with our Office within 10 days. 4 C.F.R. 21.2(a)(2) (1985); Lone Star Sanitary Service, B-216830, Jan. 18, 1985, 85-1 C.P.D. ¶ 59. Since TAB did not protest to our Office until May 3, its protest on this issue is untimely and will not be considered.

TAB's protest that award should not have been made on the basis of initial proposals is also untimely. According to OFM, TAB was advised by telephone on April 4, 1985, and

in person on April 9, 1985, that it was OFM's intention to award a contract based on initial proposals. TAB's protest of this issue on May 3 is untimely under 4 C.F.R. § 21.2(a)(2) (1985) because it did not protest within 10 working days after it knew of the basis for its protest. Koenig Mechanical Contractors, Inc., B-217571, Apr. 4, 1985, 85-1 C.P.D. ¶ 389.

We dismiss as speculative TAB's protest that the awardee received information not in the RFP. TAB alleges that SDC received information from OFM prior to the solicitation's closing date that OFM expected its contractor to maintain a mail drop box to accept correspondence from insurance companies. According to TAB, SDC could only have made provision in its bid for this procedural operation if it knew such information in advance of the bid deadline. Since no evidence has been submitted in support of this allegation, we regard it as speculative and will not consider it. R. P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 C.P.D. ¶ 39.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General Counsel